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APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

LEXINGTON

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

Order

The record discloses that there has been a failure on the part of the defendant, First Security National Bank and Trust Company of Lexington, to comply with the mandate of the Supreme Court of the United States, filed in this court on May 4, 1964, as a result of the decision of the Supreme Court handed down in an opinion of the Court on April 6, 1964.

It is therefore the judgment of this court that the defendant, First Security National Bank and Trust Company of Lexington, its executive officers and directors, are in contempt of court. It is adjudged that they pay a fine of One Hundred Dollars a day beginning this February 16, 1965 and continuing until the defendants purge themselves of the contempt by a full compliance with the mandate of the Supreme Court.

MAC SWINFORD
Mac Swinford, *Judge*

February 16, 1965

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

(At Lexington, February 16, 1965)

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

Transcript of Hearing

Before:

His Honor, Mac Swinford, Judge of Said Court.

Appearances:

For the Plaintiff

Mr. George I. Cline
United States Attorney

Mr. Larry L. Williams
Department of Justice
Washington, D. C.

For the Defendants

Stoll, Keenon & Park
Lexington, Kentucky

By: Mr. Gayle Mohney
Mr. Gladney Harville

Harbison, Kessinger, Lisle & Bush
Lexington, Kentucky

By: Mr. Clinton M. Harbison
Mr. Rufus Lisle

Arnold, Fortas & Porter
Washington, D. C.

By: Mr. Victor H. Kramer

1 The Court: We convene here this morning pursuant to an order of the Court entered on January 11, extending the time for making a report to the Court on compliance with the mandate of the Supreme Court, in the case of United States of America v. First National Bank and Trust Company of Lexington, Security Trust Company, and First Security National Bank and Trust Company of Lexington. At the time I entered that order I had cases assigned for trial in Covington on this date. Last week I discovered that it would not be possible to try the case assigned for this date and it was postponed, so I entered an order fixing today for an open hearing on the order of January 11, 1964, extending the time for a report on compliance with the mandate of the Supreme Court.

I don't know to whom I should address myself.

Mr. Williams, you are here for the United States and these gentlemen are here for the defendants. I will hear from either of you if you are ready to make that report.

Mr. Williams: May it please the Court.

2 The Court: Mr. Williams.

Mr. Williams: Pursuant to the Court's order originally of July, and more recently of January, the parties have been engaged in extensive negotiations and consultations in an attempt to arrive at an agreed upon order that could be submitted to the Court for its approval and consideration.

I might say that we have had discussions with the top staff people of the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency's office, and other experts in the banking field. We felt that this was important since this would be the first time two banks will have been separated by order of court.

After extended discussions we have prepared to submit to the Court this morning a stipulation, attached to which is a proposed interlocutory decree, which we are prepared to recommend that the Court adopt, which envisions the complete separation, in fact the creation of a new bank,

to replace the bank that disappeared as a result of this unlawful consolidation and the creation of a new bank that we think if the plan is carried through would result in a viable, independent competitor and that, therefore, it would serve the needs of the proper disposition of the case.

I am prepared to offer up to the Court at this time the stipulation and proposed decree.

The Court: I would prefer that you read it to me, if you will.

Mr. Williams: I would be very happy to do so, sir.

Your Honor, it reads as follows:

(Reporter's note: The stipulation and attached interlocutory decree were read by Mr. Larry L. Williams.)

Mr. Williams: That concludes the reading of the proposed interlocutory decree, Your Honor.

The Court: Do you wish to be heard any further?

Mr. Williams: I shall be happy to answer any questions Your Honor might have.

The Court: Well, I will hear from the attorneys for the banks if they want to be heard.

Mr. Mohney: We concur in what the Attorney General—or what Mr. Williams has said, Your Honor. We have had long negotiations in connection with this matter and have arrived at what we believe to be a sufficiently feasible plan for the separation of the banks, a matter which it was said had never been undertaken before and which has required us to consult with the various regulatory agencies involved, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Comptroller's office.

We join Mr. Williams in recommending to the Court the entry of this interlocutory decree.

The Court: Mr. Mohney, I would like to ask you a question or two.

What has this bank done, this First Security National Bank and Trust Company of Lexington, what has it done

with reference to the operation of the bank, in the election of officers or selection of personnel, or what has it done if anything about opening up branch banks or anything, since this decree of the Supreme Court came down? Has it taken any steps in that direction? Has it continued to operate, in other words, as if there had been no decree?

Mr. Mohney: No, if Your Honor please, it has not; to the extent that it was humanly possible and mechanically possible to do so, we have complied as far as we could.

Now, are you speaking—I may have misunderstood you —are you speaking of since the decree?

5 The Court: Yes. Since the opinion of the Supreme Court on April 6th, 1964. In other words, that opinion of the Supreme Court and the mandate which issued on the same day, was filed here on May 4th, held things in status quo insofar as the bank was concerned until its mandate was complied with and that was the separation of the two banks.

Now, has the First Security National Bank and Trust Company continued in its development as an entity, a single entity, a banking house, as if no decree had been entered? What have they done? In other words, have they opened up some branch banks here in Lexington?

Mr. Mohney: We have opened one branch bank, if Your Honor please.

The Court: When was that opened?

Mr. Mohney: That was opened about 30 days ago, the first of February I would say.

The Court: Was that planned and all after the decree of the Supreme Court came down?

Mr. Mohney: Well, the matter has been under consideration for several years, if Your Honor please.

The Court: I see.

Mr. Mohney: Application was made several months

6 ago. I can't give you the exact date. The matter was presented to the Comptroller's office. I might say that the Department of Justice had full notice of it.

To answer Your Honor's question, I want to be as open and as frank about it as I can.

The Court: I understand.

Mr. Mohney: We have continued to conduct the banking business, Your Honor, the best way that we knew how. We have an obligation to the public, to our shareholders, to our customers and to our clients, and it has been a very difficult thing for us in the course of these proceedings to carry on a banking business with the tremendous, intricate dealings that have to be carried on from day to day in dealing with the banking business, in modern banking.

Since the—I'm going back, back to when the Court entered the decree, when Judge Ford entered the order which Your Honor has spoken of several times—to the extent that it has been physically possible for us to do, we have complied with the terms of that order; we have endeavored as far as we could, we have kept a physical separation of the two banks; the Security Trust is still as a branch operated in its—where it used to operate, its trust department has been kept as near separate as it possibly could, ours likewise—I say "ours", I'm speaking of the First National, because I used to be with First National. With respect to the accounts, loans, investments, we have endeavored to earmark those as best we could, but under the exigencies of modern banking, it was impossible for us, since we must have a definite ratio of loans to deposits and loans to our capital situation, it has been impossible for us to operate as a single bank in two separate categories. We couldn't do that in all respects. But to the extent that it has been physically possible, we have done so and I might say that Judge Ford, when he entered that order, recognized the situation and said that we should do these things to the extent that it was practical to do so under modern banking practices.

7

The Court: Let me ask you a question right there.

Mr. Mohney: Yes, sir.

The Court: Now, it would seem from reports of the cases in the Supreme Court that the case, landmark case—we

might call it such—in this immediate category of litigation is what is identified as the Philadelphia case. That
8 was where the Supreme Court directed a merger of two Philadelphia banks to be separated. What happened in that case—

Mr. Mohney: May I interrupt you there, if Your Honor please?

The Court: Yes, sir. I'm asking for information.

Mr. Mohney: All right. I'll be glad to enlighten you.

The Court: I don't know what happened aside from what appeared in the opinion. So I thought you might have used that in connection with your endeavor to carry out the mandate of the Supreme Court here.

Mr. Mohney: It was an entirely different situation, if Your Honor please. The two banks in that case had not merged.

The Court: Well, that's my point. They kept separate until the final decree of the Supreme Court.

Mr. Mohney: Suit was filed, if Your Honor please, before any action was taken to merge the two.

The Court: Well, wasn't that true here?

9 Mr. Mohney: No, sir.

The Court: Wasn't suit filed on the same day?

Mr. Mohney: After the merger had taken place, if the Court please, and the merger had already been effected.

The Court: Well, as far as the agreement was concerned.

Mr. Mohney: No.

The Court: There had not been any absolute merger of the assets and the obligations of the banks.

Mr. Mohney: But so far as the legal entity was concerned, the other two banks had disappeared under operation of law.

The Court: Well, as far as the drawing up of the papers was concerned—

Mr. Mohney: And as far as the legal effect of it was concerned, it was completed, and there was an entirely different situation with respect to—

The Court: Well, go ahead.

Mr. Mohney: —those two banks.

The Court: Go ahead.

10 Mr. Mohney: I was simply endeavoring to answer Your Honor's question about what we had done since the decree.

The Court: Now, have you elected boards of directors?

Mr. Mohney: Oh, yes.

The Court: You have acted in that respect as if there had been no decree?

Mr. Mohney: That's correct. And as a matter of fact,—

The Court: Have you elected boards of directors for the First National Bank and also the Security Trust Company?

Mr. Mohney: There is none, if Your Honor please, at the time. We have followed the practice of electing the officers or the board of directors and the officers of the First Security, which is the only legal entity at this time, until this matter is finally completed with the plan of divestiture and the new bank is set up. In other words, it will require the reestablishment of the Security Trust Company as a separate, legal entity, which this plan contemplates to be done, and which will require us

11 to analyze and to separate some 60,000 accounts. It is going to be a difficult job for us to do that and the plan provides, gives us six months in which to present to the Court this final plan which will be a detail of the whole situation, as to what will be in one bank and what will be in the other, and it's going to take a monumental job for us to prepare that information and submit it to the Court within that time.

The Court: Thank you, sir.

Does any other attorney want to be heard?

Mr. Kramer: If the Court please, I just want to say one thing and that is that this document which the Government is handing to the Court, which includes the stipulation and order, is not the plan of divestiture; that is the next step in this procedure that we have worked out. The

plan of divestiture, itself, I would anticipate, would be a very voluminous document, identifying in detail each of the assets and liabilities of the two institutions and indicating how they are to be separated. We have worked hard on this document, Your Honor, in Washington—innumerable conferences, I can't begin to count them, I don't think Mr. Williams could. We're plowing
12 completely new ground, never before in history has a court, as Mr. Williams has said, ever undertaken the difficult task of separating a national bank into two parts. We propose in good faith on behalf of the defendant to do the best we can, but we do want to emphasize that it's untested ground, untried ground; we've tried and the Government has agreed with us to do it in the shortest time feasible, but it will take time, Your Honor.

The next step is the submission of the plan of divestiture, six months from the date Your Honor enters this interlocutory decree, unless through some unforeseen contingency we both have to come back and ask for more time.

That was all I wanted to say, Your Honor, unless you have any questions.

The Court: Thank you, sir.

Mr. Kramer: The stipulation and proposed interlocutory decree are here on the lectern. Shall I give them to the Court?

The Clerk: Shall I file them.

The Court: Let them be marked tendered.

13 The Court: Let it be tendered.

Is there any other attorney who would like to be heard from?

Mr. Ginocchio: If Your Honor please, this plan of the court will have to be studied, but I would like to ask these men some questions. The overriding feature of it appears to be that the stock in the present merged bank will be conveyed to trustees, which will be sort of a holding company, and I'm just wondering whether or not, disregarding the operational features as far as the separation of the

banks, whether we've got back to the proposition of a merger being accomplished through the establishment of a holding company which will control these two banks, vote the stock in it, elect the directors and the directors elect the officers. So we'll have here the question of whether a merger can be effected by establishing a holding company.

Now, if I'm wrong about that, I would like for these men to let me know.

The Court: The plan speaks for itself. I don't think you need any further enlightenment.

14 Mr. Mohney: I would like to say, Your Honor, I think Mr. Ginocchio has missed the point here about the nature of the plan. It does not contemplate the creation of a holding company. The trustee would only own the stock for a short period of time and then it would be distributed to stockholders.

The Court: Now, gentlemen, I am going to overrule your motion to accept that interlocutory decree as compliance with the mandate of the Supreme Court of the United States. Apparently, instead of attempting to comply with the mandate, under the opinion of the Court and under the orders of this Court, you have been organizing new banks.

The order of the Court here on the 6th of March, 1961, is not complicated, not involved. It provides, among other things that you shall:

"Keep and maintain stock ledgers and records adequate to show which shares of stock in the consolidated bank have been or are issued in exchange for stock in each of the consolidating banks and preserve all stock certificates of the consolidating banks received in exchange therefor;

15 "Keep and maintain trust records showing which of the consolidating banks was named by the settlor or testator as the fiduciary; and as to qualifications prior to March 1, 1961, showing which of said consolidating banks originally qualified as fiduciary;

"Keep and maintain records adequate to identify which of the accounts in the consolidated bank were maintained in each of the consolidating banks as of the close of business February 28, 1961;

"Keep and maintain records adequate to identify all equipment, materials, employees, and real or personal property, investments and securities belongnig to each of the consolidating banks or their customers as of the close of business on February 28, 1961;

"Keep and maintain records adequate to identify all notes and other obligations held by each of the consolidating banks as of the close of business on February 28, 1961;"

That goes on. I'll read the rest of it.

"Keep and maintain the present Trust Departments of the consolidating banks as at February 28, 1961, at their present locations and with substantially the same personnel;

"Keep and maintain records adequate to identify which accounts, notes, loans and other transactions are had with customers who were not customers of either of the consolidating banks prior to March 1, 1961;

"This order shall continue in full force and effect until further orders of the Court and shall make unnecessary any hearing on the motion for temporary injunction heretofore assigned for Friday, March 10, 1961. The Court reserves the right to make any modification or supplemental orders that may be necessary from time to time in the premises."

Now, that order was entered, that order was prepared, I believe, by the attorneys after considerable discussion, the transcript of the record of all that went on here at that time, and it seems to me, not questioning, as counsel has well said, the difficulties attached to separating these two institutions, that if that order had

been observed both in the letter and in the spirit, that this difficulty would not have arisen, certainly not to the magnitude that it apparently has, to the extent that you are now, instead of separating two banks, organizing other banks.

This court sits here as a district court in a ministerial capacity. I do not think that I would have jurisdiction under the mandate of the Supreme Court to even consider your proposed interlocutory decree here this morning. I do not think this Court has jurisdiction to maintain for a period of years the supervisory capacity involving the handling of the stock and accounts of two newly created banking institutions that this proposal suggests. I would sit here ad infinitum in that capacity, all based on the proposition of the Supreme Court's mandate, which says that these two banks should go back to where they were on the 28th of February 1961, and which the Court's order on March 6, 1961, sought to assure. I can't conceive that you could expect the Court to accept this proposed
18 plan, which you offer here as an interlocutory decree, as compliance with the mandate of the Supreme Court of the United States.

The integrity of this Court is the most significant and important thing in the world and the orders of this Court must be obeyed and must be observed and this Court has the power and authority to enforce them and that is what I will have to do. I realize and I have tried to be most generous—I don't like to use the word "generous" except in a legal term—as I did recognize the difficulties which confronted you, but dealing with banks is a serious matter. There are a great many people involved and there are a great many people who have no recourse except their confidence and trust in the institution. Both these have been great financial institutions and are today, but the Supreme Court has held that the judgment of this Court in permitting the consolidation which was based upon evidence heard here and in a large measure, I would assume, by the facts brought out here that, as I understand it, it had been approved by the Comptroller, the United States, which

was a significant thing, but the Supreme Court has held that these two banks have been in violation of the Sherman Act and that they should not be consolidated
19 and they set forth in a comprehensive opinion their reasons for the conclusion, the judges of the Supreme Court. So, it devolves upon the District Court to see that that mandate is complied with and that is what I propose to do.

As I say, nothing was done, the mandate was filed here on May 4, 1964, no steps were taken, apparently; it was the duty of the banks then to proceed to comply with it, no steps were taken; I gave considerable time, and finally in July I entered an order directing that a report be made, and from time to time upon request of counsel, both for the United States and the defendants, this Court granted extensions.

I repeat this, that I do not believe this Court has jurisdiction to entertain this proposal that you filed here this morning or tendered this morning and I will have to make a ruling on the record as it now stands. In anticipation of the possibility of just this thing arising, I have prepared this order:

"It is noted of record that the defendant, the First Security National Bank and Trust Company of Lexington, and its component corporate entities, First National Bank and Trust Company of Lexington and the Security
20 Trust Company, have failed to comply with the mandate of the Supreme Court issued by that court on April 6, 1964 and filed of record in the United States District Court for the Eastern District of Kentucky on May 4, 1964.

"On July 1, 1964, the court, noting that no steps had been taken by the defendants to comply with the mandate of the United States Supreme Court, entered an order directing that a report should be made to the court on the action if any taken by September 1, 1964.

"Subsequently, at the joint request of all parties, the court on August 25, 1964, extended the time for making

a report to December 1, 1964. Again on November 19, 1964, at a joint request of the parties, the court entered an order extending the time for making a report to the court to January 11, 1965. Again on January 11, 1965, the court, at the joint request of the parties, extended the time to make such report to February 16, 1965.

"The extensions were given upon representation to the court by the parties that they were endeavoring to
21 effect a comprehensive separation of the business between the First National Bank and Trust Company of Lexington and the Security Trust Company.

"It now appears that the defendants have not effected a separation of the business of the two banking institutions as required under the judgment of the Supreme Court.

"The defendants, First Security National Bank and Trust Company of Lexington, First National Bank and Trust Company of Lexington and the Security Trust Company, are ordered to show cause why this court should not appoint a special master to take over the books and records of the three banking institutions and to separate the businesses of the First National Bank and Trust Company of Lexington and the Security Trust Company and to place these institutions in the same position they were respectively, insofar as their business interests were concerned, as of the date of the merger, to-wit, March 1, 1961. The parties will show cause why all allowances for fees, salaries and expenses incurred by the special master should not be borne by the defendants.

22 "It is further ordered that the defendant, First Security National Bank and Trust Company of Lexington, in its corporate entity, and its executive officers and directors as individuals, will show cause why they should not be held in contempt of court for failure to comply with the order of this court of March 6, 1961.

"The parties to whom this show cause order is addressed are given until Tuesday, March 2, 1965, at 4:00 P. M., to file a response to this order.

"A copy of this order shall be served by registered mail from the clerk of the court to the First Security National Bank and Trust Company of Lexington, its attorneys of record, and to its individual executive officers and directors."

Another order:

"The record discloses that there has been a failure on the part of the defendant, First Security National Bank and Trust Company of Lexington, to comply with the mandate of the Supreme Court of the United States,
23 filed in this court on May 4, 1964, as a result of the decision of the Supreme Court handed down in an opinion of the Court on April 6, 1964.

"It is therefore the judgment of this court that the defendant, First Security National Bank and Trust Company of Lexington, its executive officers and directors, are in contempt of court. It is adjudged that they pay a fine of One Hundred Dollars a day beginning this February 16, 1965 and continuing until the defendants purge themselves of the contempt by a full compliance with the mandate of the Supreme Court."

That is the judgment of the Court on this hearing this morning. Those orders will be entered.

Mr. Marshal, you may adjourn the court.

Mr. Kramer: Could the record note an exception—

The Court: Yes, you are given an exception by law.

24 Mr. Kramer: If Your Honor please, the holding in contempt without a hearing, I think—

The Court: Well, there was a hearing here this morning and you show by reference here this morning that no steps have been taken to comply with the mandate of the Supreme Court.

Mr. Kramer: No hearing on the issue of contempt.

The Court: Very well. You have an exception to the Court's ruling.

You may adjourn court.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

(At Lexington, March 18, 1965)

No. 1424

UNITED STATES OF AMERICA, *Plaintiff*

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY, and FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Defendants*

Transcript of Hearing

Before:

His Honor, Mac Swinford, Judge of Said Court.

Appearances:

For the Plaintiff

Mr. George I. Cline
United States Attorney

Mr. Larry Williams
Department of Justice
Washington, D. C.

For the Defendants

Mr. Gayle Mohney
Lexington, Kentucky

Mr. Paul A. Porter
Washington, D. C.

Mr. Rufus Lyle
Lexington, Kentucky

Mr. Clinton Harbison
Lexington, Kentucky

Mr. Gladney Harville
Lexington, Kentucky

1 (Reporter's note: On March 18, 1965, Civil No. 1424, United States of America v. First National Bank and Trust Company of Lexington, Security Trust Company and First Security National Bank and Trust Company of Lexington, was called pursuant to order, for hearing on pending motion. The parties were represented by counsel and the following occurred:)

The Court: Gentlemen, we are here this morning upon order of the Court, for the purpose of considering the pending motion filed by the United States, the plaintiff, to enter an order which accompanied the motion. I know that a copy of that motion and the proposed order were sent to the defense—right?

Mr. Mohney: That's correct.

The Court: And also for a ruling of the Court on the responses filed by the defendant to show cause orders which were entered here on the 16th of February.

Now, there is no particular form of procedure, but if either side would like to be heard before the Court makes its rulings, I will be glad to hear you, either for the United States, Mr. Williams, in support of your motion, if

2 you want to be heard further, or any other matter on which you may wish to address the Court.

Mr. Williams: If Your Honor pleases, I would like to talk briefly about the proposed order that the government is presenting.

The Court: All right.

Mr. Williams: May it please the Court. The proposed order of divestiture that has been presented to Your Honor in the view of the government would carry out the mandate of the Supreme Court. It is quite clear, I think, from reading the opinion of the Supreme Court and the mandate itself contemplated further proceedings by this Court in order to effectuate relief consistent with the opinion of the Supreme Court. The normal procedure, in our view, is that the Supreme Court follows this practice. The rare exception is the situation where in the El Paso case, for

example—the opinion came down the same day as the opinion in this case—the Supreme Court directed the form of relief, namely, divestiture, but even in that situation, the form that the divestiture was to take was left up to the district court. I might say that the Supreme Court has consistently taken the view that in a normal situation, the form of relief should be effectuated by the district court.

3 The proposed order that we have presented to Your Honor recites, in effect, the mandate of the Supreme Court, requiring further proceedings of this Court, not inconsistent with the opinion of the Supreme Court, but also orders the defendant without delay to take all necessary steps to recreate a separate, competitive and independent bank. It shall be the competitive equivalent of the former Security Trust Company. The government has consistently taken the position throughout this proceeding that recreation of a competitive entity to replace the one that disappeared as a result of the unlawful combination is the only effective relief in our view. I think this position is fully supported by the decisions of the Supreme Court in numerous cases, the most recent one of which was the duPont decision, where the Supreme Court said that where the government has borne the considerable burden of proving a violation, it is entitled to the relief necessary to correct the offense.

I might also, may it please the Court, quote from a recent Supreme Court decision to a similar effect. In United States v. Crescent Amusement Company, et al, 323 U. S. 173, the Supreme Court stated:

4 "The Court has quite consistently recognized in this type of Sherman Act case that the government should not be confined to an injunction against further violations. Dissolution of the combination will be ordered where the creation of the combination is itself the violation . . . Those who violate the Act may not reap the

benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience."

And in United States v. duPont, the Supreme Court said:

"Divestiture or dissolution has traditionally been the remedy for Sherman Act violations whose heart is intercorporate combination and control."

I don't think it is necessary to elaborate on the legal position we have adopted, because we think it is clearly supported by the decisions. We think that type of relief is contemplated by Judge Ford's order requiring the defendant to keep separate books and records to facilitate that very result. We think the defendant, itself, recognized that that is the proper form of relief, since it has stated to the Court that it is ready, willing and able to effectuate a plan of divestiture once ordered to do so by this Court.

So, the order presented to Your Honor in effect requires the defendants to start promptly taking the necessary steps to accomplish this end. It is undeniable that one of these steps will have to be the creation of a new bank, it will have to be chartered by the chartering authority, and for it to be competitive it must be insured by the Federal Deposit Insurance Corporation. We think that it is important that this be done as promptly as possible, but it is necessary that these agencies examine the specific accounts that must be transferred to be sure that the new institution will be a sound and competitive one. It is critically important in the divestiture of a bank that there be a proper ratio between the loans and deposits in the capital structure and these are the matters that the expert views of the chartering agency and the FDIC should play an important role in.

We think that the proposed order would in broad outline require the defendants, without bothering this Court with all of the details of supervision, promptly to effectuate

a restoration of competition in Lexington and we urge that Your Honor enter the order.

6 We also urge that Your Honor let this order supersede the prior order entered in this action on February 16, because in our view, the mandate of the Supreme Court envisioned an order of divestiture must be entered by this Court before the defendants could properly assume the obligation of going forward with divestiture.

The other matter I would like to address myself to briefly, may it please the Court, is that portion of the show cause order dealing with the appointment of a master. While it is not directed at us, we feel it necessary to the public interest to advise the Court of our view. We think it not necessary because this defendant bank has now assured the Court in writing that it is ready, willing and able to move forward, with the creation of a new, competitive and independent institution. We feel very strongly that the people directly involved should bear the responsibility of undertaking this task. It is a task that has never been undertaken before pursuant to court order, and we feel that it is in its own best interests to do it in a fashion that will meet the standards of the banking authorities and can be done more promptly

7 by the officials directly involved. We think it is critical in the separation of these accounts that they be separated in such a fashion that they will remain separated, that that involves a matter of convenience and loyalty, we think it is important that it be separated in such a fashion that this will result and in our view until the bank indicates conclusively that it is unwilling or unable to effectuate divestiture, a master should not be appointed.

Another reason is, in our view very important, that the public will not be able to understand the appointment of a master. They get the idea that his function is quite different from what it would be. It may endanger the public confidence in an institution, which is critical in this

field. I think it is unnecessary at this time. I might also point out, Your Honor, that the Supreme Court has looked at this situation time and time again in anti-trust suits, and the court has never, where the government is a party, has been a party, utilized a master as a device for separating an unlawful combination, and the main reason, as the court pointed out, is that it may create unnecessary hardship to innocent parties and unless no other avenue is open, should not be resorted to.

8 We respectfully urge Your Honor that you enter an order of divestiture and not appoint a master to accomplish that purpose at this time.

Thank you.

The Court: I would like to ask you one question, Mr. Williams. Going back to the motion to enter the order which you submitted since the last sitting of this court, entered this order I believe on the first day of March, was it?

Mr. Williams: Yes, sir.

The Court: The first paragraph of that order, the last sentence, says: "Subject to such limitations on the eligibility of stock to be voted as may be appropriate to ensure the independence of operation of the banks,"—do you follow me, do you have the place there?

Mr. Williams: Yes, sir.

The Court: —"all of the capital stock of the banking association to be recreated by defendant shall be distributed to the shareholders of First Security."

Now, I would like to have your explanation of that.

9 Mr. Williams: Well, I might say, Your Honor, that—

The Court: That is your proposal. I would like to have you explain it to me.

Mr. Williams: Yes. Well, as way of background, Your Honor, I would like to say this. We have considered various forms of how this could be accomplished, the stock to be sold to third parties, for there to be a re-

exchange of the stock, but we have come to the conclusion after consultation with banking authorities and the government, that this affords the most sure means of accomplishing independence and also has the best hope of ensuring the success of the new bank to be created. The stockholders would not be injured since the existing stockholders would be getting two shares of stock in place of one they now have. We think that there should be some restrictions on voting rights, primarily because the trust departments of the respective banks have a number of shares of stock in the bank in which the trust department is located and we think that there should be some restrictions on the voting rights to ensure that no large block of stock—

The Court: Well, now, why would this new stock be issued to the stockholders of First Security?

10 Mr. Williams: Well, Your Honor, First Security stockholders are really a combination of the original stockholders of the two banks.

The Court: I know, but what do we accomplish? They have got that now and if you create a new bank and they still hold all the stock, without any recommendation for a division or a distribution, where have we accomplished anything?

Mr. Williams: Well, I think we accomplish independence in several respects, Your Honor. If we have independent management and separate, independent—

The Court: But the stock is still held by First Security and First Security is supposed to be out of existence.

Mr. Williams: The stock will be held by the individual shareholders and we think the stock is relatively widely distributed, that there is trading in the stock and if you have restrictions on the voting so that no individual can—or the banks can vote large blocks of stock to each other, that the independence of the institutions will be maintained.

Our problem is basically, what are the alternatives available? In our judgment this type of arrangement

11 assures the independence and the success of the new institution better than any other device.

The Court: Now, is that suggested in there with the idea of avoiding the payment of tax on the issue of new stock?

Mr. Williams: No, we are not concerned with the tax consequences and we don't think the Court should if it interferes with the mandate, recreating an independent, competitive institution, that the tax consequences are secondary and should not interefere, but we think in that situation—

The Court: The tax consequences should not enter into any orders of this court at all.

Mr. Williams: That's correct.

The Court: That's one of the penalties of the violation.

Mr. Williams: But it's our view, Your Honor, that the tax consequences should not be the governing factor, but we think solely from the viewpoint of being most assured of a successful operation of a new, independent bank, that this device affords the best opportunity.

The Court: Thank you, Mr. Williams.

Mr. Porter.

12 Mr. Porter: If Your Honor please, my partner, Mr. Kramer, who has appeared before Your Honor in this matter, is out of the country, so he trusted me to come down here and to review with you very briefly—

The Court: Glad to have you here, Mr. Porter.

Mr. Porter: As Mr. Mohney pointed out, I think it was some 35 years ago, your distinguished predecessor, Judge Andrew McConnell January Cochran, whose picture I see, was the judge that admitted me to his court and if your records are still extant, I think maybe you'll find maybe Colonel Allen moved my admission. But at that point I was not representing banking interests in Your Honor's court, but rather certain manufacturing interests in Eastern Kentucky from time to time.

The Court: Your presence here is appreciated by the Court.

Mr. Porter: Thank you, sir.

First of all, Your Honor, I would like to emphasize two basic values that I think are implicit in the proceeding that